

RESOLUTION NO. 4437

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND
CITY CLERK TO EXECUTE A CONTRACT WITH AUBURN
SYMPHONY ORCHESTRA FOR TOURISM PROMOTION
SERVICES**

WHEREAS, Sections 35.21.700 and 67.28.180 of the Revised Code of Washington identify tourism promotion as a legitimate purpose for expenditure of public tax monies; and,

WHEREAS, tourism is an important component of the economy of the City; and,

WHEREAS, the City is interested in promoting and marketing Auburn as a tourist destination; and,

WHEREAS, there are activities located and occurring within the corporate boundaries of the City and promotion of which would be beneficial to the City and to the residents and businesses of the City; and,

WHEREAS, eleven years ago the Auburn Symphony Orchestra was founded, performing in the City of Auburn the symphony operates under the auspices of the City of Auburn Arts Commission and its purpose is to provide professional musicians from the Pacific Northwest Ballet orchestra and other northwest professional orchestras an opportunity to perform on stage while at the same time presenting classical music of world class caliber to residents of Auburn and South King County; and,

WHEREAS, the success of the Orchestra wherever it performs will raise the orchestra's profile bringing people to hear the Orchestra and bring them to Auburn; and,

WHEREAS, a program of advertising for such events would help to insure the success of such activities by informing people about them encouraging people to attend and attracting tourists to the City; and,

WHEREAS, the City desires to retain the Auburn Symphony Orchestra to provide such services; and,

WHEREAS, the Auburn Symphony Orchestra is able to provide such promotional services in connection with the City's needs, and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor and the City Clerk are authorized to execute an agreement in substantial conformity with the Agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.


CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

ATTEST AS TO FORM:



Daniel B. Heid
City Attorney
Steven L. Gross, Asst. City Attorney



**Exhibit A
Resolution No. 4437**

**CITY OF AUBURN and AUBURN SYMPHONY ORCHESTRA
CONTRACT FOR TOURISM PROMOTION SERVICES**

THIS CONTRACT is made and entered into on the _____ day of _____, 200____, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington, hereinafter referred to as the "City," and the AUBURN SYMPHONY ORCHESTRA, a not-for-profit corporation organized pursuant to 26 U.S.C. 501(C)(3), hereinafter referred to as the "Service Provider," on the following terms and conditions.

WHEREAS, Sections 35.21.700 and 67.28.180 of the Revised Code of Washington identify tourism promotion as a legitimate purpose for expenditure of public tax monies; and

WHEREAS, tourism is an important component of the economy of the City; and

WHEREAS, the City is interested in promoting and marketing Auburn as a tourist Destination; and

WHEREAS, there are activities located and occurring within the corporate boundaries of the City the promotion of which would be beneficial to the City and to the residents and businesses of the City; and

WHEREAS one source of such activities is the Auburn Symphony Orchestra, the Service Provider, herein; and

WHEREAS, eleven years ago the Auburn Symphony Orchestra was founded, performing in the City of Auburn the symphony operates under the auspices of the City of Auburn Arts Commission and its purpose is to provide professional musicians from the Pacific Northwest Ballet orchestra and other northwest professional orchestras an opportunity to perform on stage while at the same time presenting classical music of world class caliber to residents of Auburn and South King County; and

WHEREAS, the success of the Orchestra wherever it performs will raise the orchestra's profile bringing people to hear the Orchestra and bring them to Auburn; and

WHEREAS, a program of advertising for such events would help to insure the success of such activities by informing people about them encouraging people to attend and attracting tourists to the City; and

WHEREAS, in order to advertise the City attract visitors and encourage tourism it would be advantageous for the City to contract with the Service Provider for promotional services in connection therewith

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES BY SERVICE PROVIDER** The Service Provider shall provide tourism expansion services to the City through general support and through special marketing programs as follows:
 - a. Expanding its performance venues to include locations throughout the City of Auburn and other available and appropriate regionally-located venues.
 - b. Listing the City of Auburn as the concert sponsor and including the City of Auburn in advertisements for such events.
 - c. Including opportunities at such performances for acknowledgement from the stage by Auburn Symphony Orchestra, or prominently displayed acknowledgement in the lobby.
 - d. Develop brochures and pamphlets advertising the events including the City of Auburn as the home venue of the orchestra.
 - e. The City shall have the right to review and make suggestions to all print and or all multimedia promotional materials advertising programs and other services in connection with this Contract
 - f. The Service Provider shall provide the City with their invoice a report with audience statistics, including zip code demographics of ticket buyers, and copies of all print/media and any KING FM schedules.
 - g. The Service Provider shall perform the following list of performances in 2009:
 - i. Winter concert (\$25,000)
 - ii. Winter chamber (\$12,500)
 - iii. Spring concert (\$25,000)
 - iv. Spring family chamber (\$12,500)
2. **TERM OF CONTRACT:** The Term of this Contract shall be from date of signing through December 31, 2009.
3. **COMPENSATION TO SERVICE PROVIDER:** Upon receipt of a billing statement from the service Provider detailing the performance tasks completed in advance of the payment dates specified herein the City pay to the Service Provider as compensation for the 2009 services described above the total amount of Seventy Five Thousand Dollars (\$75,000.00) payable in four (4) installments upon completion of the four (4) performances identified above.
4. **RECORDS INSPECTION AND AUDIT:** All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced and all records and books of accounts pertaining to any work performed under this Contract shall be subject to inspection and audit by the City for a period of up to three 3 years from the final payment for work performed under this Contract.
5. **CONTRACT ADMINISTRATION:** This Contract shall be administered by Auburn Symphony Orchestra Manager Lee Valenta on behalf of the Service Provider and by Mayor or designee on behalf of the City. Any written notices required by terms of this Contract shall be served or mailed to the following addressees unless changed by written notice to the other party:

If to the City: City of Auburn, 25 West Main Street, Auburn WA 98001
If to the Service Provider: Auburn Symphony Orchestra, PO Box 2186, Auburn WA 98071
6. **NOTICES:** All notices or communications permitted or required to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail postage prepaid for mailing by certified mail return receipt requested and addressed if to a party of this Contract to the address set forth next to such party s signature at the end of this Contract or if to a person not a party to this

Contract to the address designated by a party to this Contract in the foregoing manner Any party may change his or its address by giving notice in writing stating his or its new address to any other party all pursuant to the procedure set forth in this section of the Contract.

7. **INSURANCE:** The Service Provider shall be responsible for maintaining during the term of this Contract and at its sole cost and expense insurance coverages in amounts not less than the amounts set forth herein below. The Service Provider shall furnish evidence satisfactory to the City of all such policies During the term hereof the Service Provider shall take out and maintain in full force and effect the following insurance policies:
 - a. Comprehensive general liability insurance including automobile and property damage insuring the City and the Service Provider against loss or liability for damages for personal injury death or property damage arising out of or in connection with the performance by the Service Provider of its obligations hereunder with minimum liability limits of \$1,000,000.00 combined single limit for personal injury death or property damage in anyone occurrence
 - b. Such workmen s compensation and other similar insurance as may be required by law.
8. **INDEMNIFICATION:** The Service Provider shall indemnify and hold harmless the City and its officers agents and employees or any of them from any and all claims actions suits liability loss costs expenses and damages of any nature whatsoever by any reason of or arising out of the negligent act or omission of the Service Provider its officers agents employees or any of them relating to or arising out of the performance of this Contract. If a final judgment is rendered against the City its officers agents employees and or any of them or jointly against the City and the Service Provider and their respective officers agents and employees or any of them the Service Provider shall satisfy the same to the extent that such judgment was due to the Service Provider s negligent acts or omissions.
9. **RESTRICTION AGAINST ASSIGNMENT:** Service Provider shall not assign this Contract or any interest herein nor any money due or to become due hereunder without first obtaining the written consent of the City nor shall the Service Provider subcontract any part of the services to be performed hereunder without first obtaining the written consent of the City
10. **AMENDMENT MODIFICATION OR WAIVER:** No amendment modification or waiver of any condition provision or term of this Contract shall be valid or of any effect unless made in writing signed by the party or parties to be bound or such party s or parties duly authorized representative s and specifying with particularity the nature and extent of such amendment modification or waiver Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Contract.
11. **TERMINATION AND SUSPENSION:** Either party may terminate this Contract upon Ninety 90 days written notice to the other party It is provided however that if the Service Provider has performed services pursuant to the Contract the Service Provider shall be compensated for such services in accordance with the rate of compensation provided herein.
12. **PARTIES IN INTEREST:** This Contract shall be binding upon and the benefits and obligations provided for herein shall inure to and bind the parties hereto and their respective successors and assigns provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Contract This Contract is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party including contractors sub contractors and their sureties.

13. **COSTS TO PREVAILING PARTY:** In the event of litigation or other legal action to enforce any rights responsibilities or obligations under this Contract the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.
14. **APPLICABLE LAW:** This Contract and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be King County State of Washington provided however that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Service Provider of the services.
15. **CAPTIONS HEADINGS AND TITLES:** All captions headings or titles in the paragraphs or sections of this Contract are inserted for convenience of reference only and shall not constitute a part of this Contract or act as a limitation of the scope of the particular paragraph or sections to which they apply As used herein where appropriate the singular shall include the plural and vice versa and masculine feminine and neuter expressions shall be interchangeable Interpretation or construction of this Contract shall not be affected by any determination as to who is the drafter of this Contract this Contract having been drafted by mutual agreement of the parties.
16. **SEVERABLE PROVISIONS:** Each provision of this Contract is intended to be severable If any provision hereof is found by a court of competent jurisdiction to be illegal or invalid or not applicable to any person or circumstance for any reason whatsoever such illegality invalidity or non applicability shall not affect the legality or validity of the remainder of this Contract or its applicability to other persons or circumstances.
17. **ENTIRE AGREEMENT:** This Contract contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements contracts and understandings between the parties with respect to such subject matter.
18. **COUNTERPARTS:** This Contract may be executed in multiple counterparts each of which shall be one and the same Contract and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed effective the day and year first set forth above:

AUBURN SYMPHONY ORCHESTRA

CITY OF AUBURN

Title: _____

Date: _____

Peter B. Lewis, Mayor

Date: _____

ATTEST:

Danielle Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney
For Steve L. Gross, Asst. City Attorney